



## NEWS REPORT

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| <b>Date:</b>                     | 08 June 2011   |
| <b>Expert:</b>                   | Rikki Holtmaat   |
| <b>Title:</b>                    | Post Company refuses to hire a woman suffering from obesity  |
| <b>Country:</b>                  | The Netherlands  |
| <b><u>Context</u></b>            |  |
| <b>Issue at stake:</b>           | Refusal to hire a woman with obesity is direct discrimination on the ground of disablement / chronic disease |
| <b>Ground of discrimination:</b> | Disablement / chronic disease  |
| <b>Source:</b>                   | Equal Treatment Commission Opinion of 13 May 2011 (ECT 2011-78)  |
| <b>Field:</b>                    | Education  |
| <b>Legislative provisions:</b>   | Disability Discrimination Act (DDA) Art 1 and 4(a)   |

### Content

**Case Law:** A woman with serious overweight (obesity) applied for a job as a 'postman' with a Post Company. Postmen are supposed to deliver the mail (appr. 40 kilograms for each delivery) by means of a bicycle. After she had filled in a form on the internet, providing information about her C.V., her health condition, etcetera, she was invited for an interview on the basis of a relatively high test-score result. After she had the interview with a HR manager, it was made clear to her that she would not be appointed because of her overweight.

The Equal Treatment Commission (ETC) first investigated whether having overweight or obesity fell under the scope of the equal treatment law (DDA), which covers disablement and chronic diseases. Both concepts are not defined in the DDA. The UN World Health Organisation (WHO) had clarified that adult persons with a Body Mass Index (BMI) of 25- 30 are overweight. Persons having a BMI higher than 30 are considered to show obesity. There are three levels of obesity: BMI 30-35 (obesity), 35-40 (serious obesity) and 40- and higher (morbid obesity). All forms of obesity are considered as a chronic disease by the WHO. The applicant has a BMI of more than 40. For this reason, she fell under the scope of the DDA.



A person who, as a consequence of a disablement or chronic disease, cannot perform the essential tasks or functions of the (offered) job, cannot rely on the DDA, unless reasonable accommodations are possible. In this case, the ETC concluded that the Post Company based its decision not to hire the woman on general observations and previous experiences, and that it did not really investigate whether this particular person would or would not be able to perform the essential tasks or functions of her job.

Also, the Company did not investigate whether providing for reasonable accommodation would be possible (e.g. delivering the mail on foot or by car, instead of on a bicycle). One function of the DDA is to prevent discrimination based on general assumptions or prejudices (stereotypes). The HR manager did not base her decision on (investigated) facts, but on the basis of general assumptions related to bad physical condition of people with serious overweight. Therefore, the Post Company discriminated the woman on the ground of chronic disease.

**Internet link source and additional information:**

**Reference number:** ETC 2011-78

**Address of the webpage:** <http://www.cgb.nl/oordelen/oordeel/221965/volledig>